IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.568 of 1999

Date of decision 1-12-2006

State of H.P. Appellant

Versus

Pinku and others Respondents

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1]

For the appellant : Mr.Ashutosh Burathoki,
Addl. Advocate General.

For the respondents: Mr.Ravinder Thakur,
Advocate, for respondents No.1 and 4.

Mr.N.K.Thakur, Advocate,
for respondents No.2 and 3.

V.K.Ahuja, J.(Oral)

This is an appeal filed by the appellant against the judgment of the court of learned Judicial Magistrate Ist Class, Bilaspur dated 30.3.1999 vide which the accused were acquitted of the charges framed under Sections 451, 323, 325 and 506 read with section 34 IPC.

Briefly stated the facts of the case are that on 12.1.1997 at 10 a.m. the statement of complainant Sukh Ram was recorded by the police under Section 154 Cr.P.C. In the said statement the complainant had alleged that on the previous day at about 9.30 p.m. members of Nehru Yuvak Mandal being under the influence of liquor came to his house, quarreled with him and gave him blows with danda and threw stones and he suffered injuries. They also took wood lying by the side of his house. In the complaint he alleged that when the quarrel took place the accused persons gave abuses at the spot. The accused Ramesh and Sanju gave him blows with danda and Pradhan of Nehru Yuva Mandal, namely, Bhandari, was also present there who gave him blows. He further alleged

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[1] Whether reporter of local papers are allowed to see the judgment ?

that he was having civil litigation regarding the land with these persons who had also earlier given beatings to him. He alleged that his wife Sundari and other ladies Kesari and Sunita also suffered injuries with danda and stones. He also alleged that his watch and one ring of Smt.Sunita were also lost in this process. On this report a case was registered and the respondents were tried by the learned trial court and the trial resulted in acquittal, hence this appeal.

I have heard Mr.Ashutosh Burathoki, learned Additional Advocate General for the appellant and Mr.Ravinder Thakur and Mr.N.K.Thakur, learned counsel for the respondents and have gone through the record. The submissions made by the learned Additional Advocate General were that the statement of the complainant has been duly corroborated by the statements of two other eye witnesses, namely, Paras Ram (PW-2) and Kaushalya Devi (PW-6) as well as by the medical evidence which also corroborate the ocular version put up by the prosecution.

On the other hand, submissions made by learned counsel for the respondents was that it has been proved on record that the relations between the parties were strained. They were having civil litigation as well as criminal cases, therefore false case was planted by the complainant against the accused persons. It was also submitted that there were houses near the place of occurrence and 150 persons were there, but none of them was cited as a witness and the only witnesses cited and produced by the prosecution are the son and daughter of the complainant and other members of the family who suffered injuries in quarrel were also not produced by the prosecution and therefore their testimonies cannot be relied upon.

On perusal of the record of the case, it is clear that according to the report under Section 173 Cr.P.C. the police set into motion on telephonic message received on 12.1.1997 at 11.30 a.m. from Narinder Kumari Pradhan, Gram Panchayat who alleged that Nehru Yuvak Mandal boys had given beatings and she also named two persons Ramesh Kumar and

Sanjiv and further alleged that Sukh Ram had been taken to PHC Panjgain in an unconscious state. The said report was neither proved in evidence nor Narinder Kumari was produced by the prosecution. Hence it is not clear how the police came to the spot and how the statement was recorded under Section 154 Cr.P.C. In the said report complainant named his own son Paras Ram (PW-2) having witnessed the occurrence or being present there and similarly he has not named Kaushalya Devi (PW-6) his daughter being present there or having witnessed the occurrence. However, apart from the complainant himself both these witnesses were examined by the prosecution. A perusal of the statement of complainant Sukh Ram (PW-1) shows that he has stated in general that the accused persons present there gave lathi blows to his wife, daughter-in-law and he suffered injuries on his head and other parts of the body. He did not attribute any particular injury to any person nor explained as to which of the blow was given by which of the accused persons. It is not his case that number of blows were given by several persons and he could not notice as to who had given blows to him or other members of his family and on which particular part of the body these injuries were inflicted. He admitted in his cross-examination about the dispute in regard to the possession and the case having been filed by him against the State Government. He admitted that there are houses of three persons near the place of occurrence but denied his knowledge in case they were also sitting near the fire earth. He has not denied the suggestion that they were not there but denied his knowledge in this regard. He stated that he has built a house at his own land and denied the suggestion that it was on the Government land.

Paras Ram (PW-2) examined by the prosecution has stated that the accused persons gave blows to his family members with danda and stones and he did not state as to which of the accused was carrying the danda or which of the accused gave blows to the complainant or other members of the family. He stated that he snatched the danda from the

hands of accused Ramesh and Sanjiv. But surprisingly he had not suffered any injury and stated that other accused were throwing the stones. He stated that during these beatings Sukh Ram, Sundri, Besri and Sunta etc. suffered injuries. But none of them has been examined by the prosecution except the complainant though these persons were related to the complainant and could have easily corroborated his case with regard to the injuries suffered by them. He admitted that there are houses of other persons also near his house, but none has been examined or associated by the police during investigation of the case. He admitted in cross-examination that the quarrel continued for 5-10 minutes and he suffered no injuries at that time. He is the son of the complainant.

Smt. Kaushlya Devi (PW-6) daughter of the complainant has stated that she had come to her parents on one day earlier due to Lohri festival. She stated that when her bhabhi Sunita and mother Sundri Devi prevented the accused persons from carrying the wood, they gave abuses to them. She stated that accused Ramesh had bamboo stick in his hand and accused Pinku had also having similar stick in his hand. She stated that accused Ramesh gave danda blow on the head of her father. Accused Pinku gave blows to her mother as well as her bhabhi while Bhandari threw stones. She has denied her knowledge in regard to the case filed by her father. She clearly stated about presence of 100-150 persons at that time and stated that they all threw stones at that time and therefore the possibility that the complainant and other persons suffered injuries resultantly cannot be ruled out.

From the perusal of the above it is clear that the complainant did not cite his son and daughter as eyewitness in the first information report lodged with the police, but they were produced by the prosecution as eye witnesses. It cannot be said that the complainant had forgotten to notice the presence of his son and daughter at the relevant time. The other persons, namely, Sunita, Sundri etc. comprising family members who suffered injuries and could have given natural version of the incident, were

not produced by the prosecution for the reasons best known to them. Their medico legal certificates Ex.PW-4/B to Ex.PW-4/D proved in evidence from the statement of PW-4 Dr.Ajay Aggarwal, are of no help to the prosecution case. These witnesses have not appeared in the witness box and stated that they suffered injuries at the time of occurrence at the hands of accused persons. It is on record that there is a dispute between the complainant and accused persons and civil litigation is going on as a result of which criminal case was also registered earlier as admitted by the complainant. The presence of the other persons at the spot as also the persons of nearby houses was established but none was produced either from those houses or the persons present there. The statements of prosecution witnesses are not such upon which conviction of the accused could be sustained. There is no infirmity or perversity in the judgment of the learned trial court, which calls for no interference. Therefore the final conclusion, arrived at by the learned trial court acquitting the accused calls for no interference by this court and as such the findings of the learned trial court are accordingly upheld. The appeal filed by the appellant is hereby dismissed. Bail bonds shall stand discharged forthwith.

December 1,2006(g) **(V.K.Ahuja),J.**